IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO.326 OF 2006

Shri Gorakhnath Vithal Kelkar ....Petitioner

Versus

Mrs. Vimal Krishnarao Vashirde ....Respondent

Mr. K.K.Jadhav for petitioner

Mr.V.A.Gangal with Sandeep A. Bhagwat for respnodent

CORAM : P.V.KAKADE, J.

DATE : 30TH JANUARY 2006.

P.C.:

1. Heard the learned counsel for the petitioner as well as for respondent. Perused the record.

2. The petitioner has preferred this petition against the judgment and order passed by lower appellate court dated 1.12.2005 dismissing the appeal and confirming the judgment and order passed by trial court dated 18.7.2000

directing the petitioner-defendant to hand over vacant and peaceful possession of the suit premises consisting of Room No.5 from House No.116, Nikadwari Lane, Bombay 400004 within six months from the date of the order. The decree came to be passed under Section 13(1)(g) read with Section 13(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as "the Bombay Rent Act").

3. The plaintiff-landlady filed the suit against the defendant under Section 13(1)(g) of the Bombay Rent Act for ejectment of the suit premises on the ground that the land-lady is owner of the property bearing House No.116, Nikadwari Lane, Bombay 400 006. The defendant prior to termination of his tenancy in respect of Room No.5 was paying monthly rent of Rs.41.55 p.s. inclusive of permitted increases. The plaintiff sought possession of the suit, inter alia, submitting that she required the suit premises reasonably and bonafide for her own occupation along with her family members. According to her, her family consisted of 10 members in the year 1979, whereas it grew and now it consists of 13 members. According to her, she was in occupation of double room having total area of less than 200 sq. ft. and now she

is unable to reside in the premises with 13 members in the family. Apart from this fact, her married daughters, who visited her occasionally cannot be accommodated as and when they come. It is also submitted that she cannot live at Dahisar where other premises was available due to her old age and medical ailments and therefore, required the premises reasonably and bonafide. The defendant challenged the case of the plaintiff on various grounds including that she has owned several other places in Mumbai and therefore, she was not in need of any other premises. According to the petitioner, there were 22 members in the family and therefore, he would suffer greater hardship if the decree is passed than the landlady if the courts refused to pass decree. On these pleading the trial court proceeded to adjudicate the dispute on merits and came to the conclusion that the landlady was entitled to prove the decree under Section 13(1)(g) read with Sec. 13(2) of the Bombay Rent Act.

. The appellate court after hearing both sides concurred with the findings recorded by the trial court and dismissed the appeal hence the present petition.

4. At the outset, it may be noted that after scrutiny

of the judgments of both the courts below, who have recorded concurrent findings against the petitioner, show that they have properly appreciated the entire evidence on record. The learned counsel for the petitioner sought to make capital out of rejection by the appellate court of his Notice No.714 of 2002 for seeking permission to lead additional evidence. According to the learned counsel for the petitioner, such rejection has prejudiced his case and he was unable to produce on record the evidence showing that the land lady had suitable accommodation elsewhere and that he would suffer greater hardship if the decree was passed. However, the lower appellate court has dealt with this aspect quite legally holding that the so-called new grounds which were sought to be introduced by way of additional facts were already disclosed by the plaintiff in her evidence and in the deposition of her witnesses and the petitioner-defendant had sufficient opportunity to cross examine the plaintiff and her witnesses to bring on record the facts sought to be established by separate notice. Therefore, I do not see the lower appellate court has committed any illegality in rejecting the said notice.

5. The learned counsel for the petitioner also sought to rely on catena of judgments of this court as well as

Apex Court submitting that the findings recorded by the courts below were perversed in the sense that they had not properly appreciated the evidence on record. However, perusal of the said judgments sufficiently show that either those are not relevant for our purpose in this case or not applicable at all and therefore, I am satisfied that both the courts below have appreciated the evidence in just, legal and proper manner and therefore, it would brook no interference.

. In the result the petition stands dismissed with no order as to costs.

6. At this stage the learned counsel for the petitioner sought Stay of the order. In view of the facts and circumstances the Order shall not be executed for weeks.